

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

KEITH D. FLOOD,

Plaintiff,

v.

Case. No. 10-14819
Hon. Lawrence P. Zatkoff

COMMISSIONER OF SOCIAL
SECURITY,

Defendant.

/

OPINION AND ORDER

AT A SESSION of said Court, held in the United States Courthouse,
in the City of Port Huron, State of Michigan, on October 3, 2011

PRESENT: THE HONORABLE LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

I. INTRODUCTION

Plaintiff filed this action seeking Social Security disability benefits. This matter currently comes before the Court on the Magistrate Judge's Report and Recommendation [dkt 13], in which the Magistrate Judge recommends that Plaintiff's Motion for Summary Judgment [dkt 11] be denied and Defendant's Motion for Summary Judgment [dkt 12] be granted. Plaintiff has filed objections to the Magistrate's Report and Recommendation [dkt 14], to which Defendant has responded [dkt 15]. The Court has thoroughly reviewed the court file, the respective motions, the Report and Recommendation, Plaintiff's objections, and Defendant's response. For the reasons discussed below, the Court ADOPTS the Magistrate Judge's Report and Recommendation. Plaintiff's Motion for Summary Judgment is DENIED, and Defendant's Motion for Summary Judgment is GRANTED. The Court will, however, briefly address Plaintiff's objections.

II. ANALYSIS

Plaintiff raises two objections to the Magistrate Judge's Report and Recommendation: (1) the Magistrate Judge erroneously found that any error the ALJ made as to the height Plaintiff needed to elevate his foot was harmless error; and (2) the Magistrate Judge erred in finding that the ALJ properly discredited Plaintiff's subjective statements regarding the pain from his injury.

With respect to Plaintiff's first objection, the Magistrate Judge stated that Dr. Needleman only temporarily restricted Plaintiff to a height elevation and that such a restriction was not permanent. Plaintiff contends that the Magistrate Judge overlooked Dr. Needleman's statement on June 23, 2009, wherein he stated that Plaintiff "still has the same problems that he had before with severe ankle pain," and that this "[s]eems to be a permanent problem." The Court, however, finds that the Magistrate Judge's finding is correct. Dr. Needleman's June 23, 2009, statement does not alter the fact that he did not again restrict Plaintiff to elevating his foot. Dr. Needleman's statement and prior reports also fail to indicate that keeping Plaintiff's foot off the ground one-foot was insufficient. Aside from Dr. Needleman's reports, there is also no basis in the other medical evidence in the record that Plaintiff had to elevate his foot to chair level rather than just one-foot off the ground. Furthermore, Plaintiff fails to show, based on the arguments raised in Defendant's reply brief, that requiring Plaintiff to elevate his foot to chair level eliminated his ability to perform any jobs. Thus, the Magistrate Judge's finding is not erroneous and the Court rejects Plaintiff's first objection.

With respect to Plaintiff's second objection, the Magistrate Judge cited the relevant legal authority and discussed the ALJ's analysis of Plaintiff's allegations concerning the intensity of the pain in his foot. The Magistrate Judge then showed that the ALJ had found, after reviewing

Plaintiff's allegations under the regulatory factors, that the objective medical evidence supported discrediting Plaintiff's allegations. As such, the Magistrate Judge's findings are not erroneous and the Court rejects Plaintiff's second objection.

III. CONCLUSION

Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment [dkt 11] is DENIED, and Defendant's Motion for Summary Judgment [dkt 12] is GRANTED.

IT IS SO ORDERED.

S/Lawrence P. Zatkoff
LAWRENCE P. ZATKOFF
UNITED STATES DISTRICT JUDGE

Dated: October 3, 2011

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this Order was served upon the attorneys of record by electronic or U.S. mail on October 3, 2011.

S/Marie E. Verlinde
Case Manager
(810) 984-3290